

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Original
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In re applications of

Trinity Broadcasting of Florida, Inc.
for Renewal of License of Station
WHFT-TV, Miami, Florida

Glendale Broadcasting Company
for a Construction Permit for a New
Commercial Television to Operate on
Channel 45, Miami, Florida

) MM Docket No. 93-75

) File No. BRCT-911001LY

) File No. BPCT-911227KE

To: Hon. Joseph Chachkin
Administrative Law Judge

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MOTION TO PERMIT TELEVISION COVERAGE OF HEARING

The Spanish American League Against Discrimination ("SALAD"), by counsel, respectfully moves for issuance of an order permitting television coverage of the hearing of this case, subject to reasonable limitations as discussed below.

SALAD is a civil rights organization in Miami. It does not wish to bring cameras into the courtroom. It is not a news organization, nor is it filing this motion on behalf of a news organization.

Among the primary reasons motivating SALAD's participation in this case is its longstanding desire to inform the public about its rights in broadcasting. In SALAD's experience, the public at large in Miami is generally unaware that licenses are not held in perpetuity (47 U.S.C. §§304, 307) that the Commission cannot censor broadcasts (47 U.S.C. §326) and that licenses must be renewed or denied based, inter alia, on their performance in serving the public interest. (47 U.S.C. §309).

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Television coverage of this trial would go a long way toward informing the public on how broadcasting is regulated. Thoughtful coverage will facilitate public awareness of the manner by which the Commission discharges its responsibilities under the Communications Act.

In 1976, only Texas and Colorado allowed cameras and tape recorders in courtrooms. However, nonintrusive broadcast coverage of court proceedings has since become commonplace. According to the Radio-Television News Directors Association, only D.C., Indiana, Mississippi, Missouri, South Carolina and South Dakota ban all cameras and tape recorders from their courtrooms. In 29 states, the press must have consent from the Judge, the parties, or both before using cameras or tape recorders. In sixteen states, including Florida, no consent from either the judge or the parties is required, although local custom in Florida (and most other states) is to coordinate such coverage informally with the Judge and the parties. In September, 1990, the U.S. Judicial Conference authorized a three year experiment (concluding in June, 1994) whereby cameras are allowed into two U.S. courts of appeals and six federal district courts to cover civil cases.

Televised coverage of Commission hearings is likely to be consistent with Commission policy which affords broadcasters wide ranging discretion in their coverage of issues of public concern. An order allowing television reporters the same right of coverage possessed by newspaper reporters would be especially appropriate coming from the agency with the greatest expertise in the regulation of the broadcast media.

To the best of SALAD's knowledge, no FCC hearing has ever drawn a request for television coverage. However, this motion is not quite a matter of first impression. The FCC videotapes its own meetings and oral arguments. These tapes are in the public domain and often find their way onto national television newscasts. Audiotape recording of Commission meetings by journalists is commonplace, and SALAD understands that on occasion video recording of Commission meetings by journalists has occurred.

None of the justifications often invoked against allowing coverage is applicable here. This is not a criminal case and there is no jury. There are no child witnesses, and no witness falls into a protectable category such as a victim of a sex crime or a police informant. Nor, as far as SALAD is aware, is any witness subject to a medical condition which would be exacerbated by her exposure to nonintrusive television coverage. See Florida v. Green, 395 So.2d 532 (1981) (excluding cameras based on fear witness would lapse into psychosis.) As distinguished from other nationally televised matters involving churches, the wrongdoing at issue in this case is not of a sensational or prurient nature.

The reasons news organizations might have for covering this hearing are, for the most part, irrelevant to whether coverage should be permitted. CNN apparently wishes only to televise Paul Crouch's testimony. Perhaps CNN wishes to do this because Crouch is a well known public figure. CNN has extensive experience in covering trials in Florida and elsewhere, has covered this case for over a year and has timely asserted its interest in videotaping the hearing.

Trinity's motives for covering the hearing are less clear. In the morning session yesterday at which CNN's timely request for coverage was discussed, Trinity's counsel argued against allowing any television coverage. Among counsel's arguments were that cameras would distract the witnesses, that coverage by CNN might be unbalanced because CNN only wants to cover one witness, and that coverage might skew the outcome of the case. The Presiding Judge rejected these arguments and indicated that he would permit CNN to cover the proceeding.

Evidently Trinity thereupon experienced a lunch-hour conversion, for in the afternoon session yesterday, Trinity's counsel unexpectedly sought leave for Trinity to videotape the entire hearing. Apparently Trinity believes there is no risk of witness distraction or skewed coverage as long as it is supplying the cameras.

To SALAD's knowledge, Trinity has no news department, has not previously covered this case as a news event and has no journalistic experience covering trials. Evidently Trinity's 11th hour request for coverage was intended only to discourage the Presiding Judge from allowing CNN to cover the hearing.

The Presiding Judge should not be swayed by Trinity's transparent tactical maneuver. Nonetheless, the Presiding Judge must treat Trinity as he would any other putative journalistic organization. News organizations often cover news events about which their parent companies have an interest in the outcome. For example, SALAD understands that ABC provided video coverage of the 1967 ABC/ITT oral argument.

If Trinity's coverage is slanted or biased, the public will have the right to complain, and such slanted coverage would reflect poorly on Trinity's right to hold a license. If Trinity's coverage results in an outpouring of viewer mail, such mail will be referred to the Managing Director, and the Presiding Judge will not be influenced by it.^{1/}

SALAD has previously raised the possibility that its witnesses might be intimidated. Many persons SALAD had sought as witnesses were fearful of participating in this proceeding because they believed that Trinity would use the power derived from its ownership of WTBK-TV to punish them or their organizations. That potential witnesses might have felt intimidated in this way was very unfortunate, although by pointing this out SALAD does not accuse Trinity of deliberately intimidating any witness. SALAD's experiences in developing its case only demonstrates more vividly the need for greater public awareness of how the Commission performs its licensing function. If members of the public could see how a hearing works, how testimony is taken, and how cross-examination is handled, much of their fear of participating in the Commission's processes in years to come might dissipate.

A ban on coverage cannot be justified simply because of fear that prejudicial broadcast accounts may impair the ability of a finder of fact to decide the merits. Even in criminal trials, defendants must demonstrate to a court how a trial will be

^{1/} It would be a shame if a licensee, through the use of the very licenses which are at issue in a hearing, were able to render it politically impossible for the Commission to deny it what it wants. If that happens, then a Commission license will truly elevate its holder to a status "above the law."

adversely affected by the presence of recording equipment. Chandler v. Florida, 449 U.S. 560 (1981). In a civil, nonjury matter, the possibility of prejudice is virtually nonexistent. In Florida, even in a criminal trial, when a defendant claims that trial coverage would improperly influence a jury, an evidentiary hearing must be held. Florida v. Palm Beach Newspapers, 395 So.2d 544 (1981).

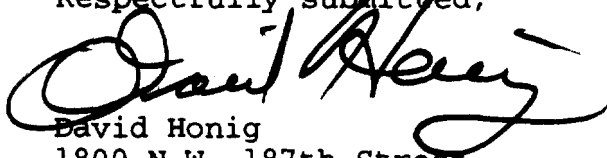
To protect the public interest in a fair trial, assure the orderly conduct of the proceeding, and avoid the possibility of intimidation of the witnesses or parties, SALAD proposes these conditions on coverage:

1. Any organization representing to the Presiding Judge that its coverage will be undertaken for news reporting purposes on behalf of a broadcast licensee or cable channel should be accredited as a news organization for the purpose of videotaping all or part of this proceeding.
2. Only one camera should be permitted in the courtroom at any one time. News organizations wishing to cover the hearing should be encouraged to work out pooling arrangements according to customary practice in the industry. If such pool arrangements cannot be worked out, then videotaping requests should be accommodated in the order received by the Presiding Judge. If a news organization is unable to cover a particular witness because its request was not first in line and it was unable to work out a pool arrangement with the first-in-line news organization, it should still be permitted to audiotape that witness' testimony. However, if the first-in-line news organization does not intend to videotape another witness' testimony, then other news organizations should be permitted to videotape such witness' testimony according to the order in which their requests are received.
3. Any order allowing coverage should be expressly limited to specify that:
 - a. All journalists and support staff should be expected to report to the Presiding Judge by 9:00 A.M. daily before trial.

- b. On-camera or off-camera interviews of witnesses or counsel, or standups by reporters, should not be conducted in public areas (lobby and hallways) or Commission facilities on the second floor of 2000 L Street N.W.
- c. Tape recording of the proceedings should be done passively by a camera crew using one camera, with only ambient light. Microphones might be placed on the bench, on the witness stand and on the tables used by counsel. The trial should not be interrupted to accommodate a camera crew's technical difficulties, but might be briefly delayed for a change of tape.
- d. Objections by any witness already noticed for crossexamination to video coverage of her testimony should be made in open court by 3:00 P.M. this Friday, December 3, 1993. Such objections by a rebuttal witness should be made as soon as is practicable.

In the event the Presiding Judge is unable to grant this motion, SALAD respectfully requests that the question be certified to the Review Board, the Managing Director or the full Commission as is appropriate.

Respectfully submitted,



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Counsel for the Spanish American
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December 1, 1993

CERTIFICATE OF SERVICE

I, David Honig, this 1st day of December, 1993, hereby certify that I have caused to be delivered by hand the foregoing "Motion to Allow Television Coverage of Hearing" addressed to the following:

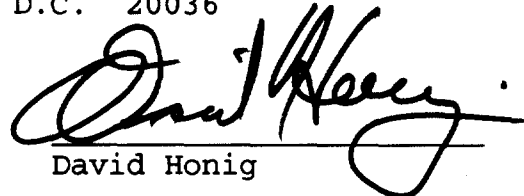
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